THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 7937 of 1996

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DATED: 04-01-2006

K.V. Rama Sastry & 3 others.

..... PETITIONERS

AND

The District Collector,
Eluru, West Godavari District & another.

.....RESPONDENTS

ORDER:

Questioning the proceedings acquiring land under the provisions of the Land Acquisition Act (the Act) petitioners filed this petition.

2. The case of the petitioners is that the lands of a devastanam are targeted for acquisition, for providing house sites to the weaker sections of society, ignoring the fact that the temple has to be maintained from the income derived from the said land, and without taking into consideration that other suitable land is available in the village for that purpose, dispensing with the enquiry under Section 5A of the Act, though there is no warrant to dispense with such enquiry, and that the 1st respondent by making gazette publication and paper publication relating to draft notification under Section 4(1) and draft declaration under Section 6 of the Act on 15-03-1996 and 16-03-1996 respectively tried to take possession of the land of the devasthanam and so the proceedings for acquisition of the land belonging to the temple are liable to quashed.

3. The contention of the learned counsel for the petitioners is that since the publication of the draft notification and draft declaration in the gazette and in the

news papers was made on the same day i.e., 15-03-1996 and 16-03-1996 respectively, it is clear that the respondent have been planning the acquisition with a design to deprive the temple of its property, because there is no scope for the gazette publication and paper publication appearing on the same day and in any event since there are no valid grounds for dispensing with the enquiry under Section 5A of the Act the impugned proceedings may be quashed.

4. In the counter affidavit filed by him on behalf of the respondents, second respondent admitted that the draft notification and draft declaration were published in the District Gazette and the news papers on 150-03-1996 and 16-03-1996 respectively. As rightly contended by the learned counsel for the petitioner, unless there is a perfect planning publication in the gazette and the news papers would not appear on the same day. The fact that within a short span of one day after the notification under Section 4(1) of the Act, declaration under Section 6 of the Act was made both in the gazette and in news papers shows that the acquisition of the temple land is made with a design.

5. Though the temple, which is the owner of the land proposed to be acquired, may be awarded compensation, that amount may not cater to the needs for regular maintenance and upkeep of the temple, as the capital value of cash will not improve over a period of time, and as the interest accrued on the amount kept in deposit in banks would be meager. Value of the land appreciates year by year and so institutions like to retain immovable property. Had an enquiry under Section 5A been held petitioners and others would have raised objection and would have shown some other suitable lands for the purpose for which the acquisition is intended.

6. In ***UNION OF INDIA v. MUKHESH HANS*** *a n d* ***UNION OF INDIA v. KRISHANLAL AMAJA*** the apex Court clearly held, since the only right which the owner of the land has, under the provisions of the Act, is to participate in the enquiry under Section 5A of the Act and raise his objection, that right is a very valuable right, and in order to deprive him of such right there must be valid and substantial reasons, and such enquiry can be dispensed with only when the acquisition does not brook even the small time delay that may take, for the enquiry under Section 5A of the Act,

and that dispensation of enquiry under Section 5A should not be made in a routine and casual manner.

7. The averments in the counter affidavit of 2nd respondent show that there is time gap of about one month from the date of_inspection of the land proposed to be acquired and the notification under Section 4(1) of the Act. So it is clear that there was no urgency or need for dispensing with the enquiry under Section 5A of the Act.

8. Since interim stay of further proceedings was granted on
16-04-1996 in W.P.M.P.No.9749 of 1996, while admitting this petition, since nearly ten years elapsed from that day, if really there was any urgent need, some other property must have been acquired for the purpose of providing house sites. If not it can be inferred that the proposed acquisition was motivated and the enquiry under Section 5A of the Act was dispensed with only with a view to shut the mouths of the devotees of the devasthanam, and so it can be termed as *mala fide*. In view thereof this petition deserves to be allowed.

9. Accordingly, the Writ Petition is allowed with costs and the impugned notification is quashed.

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(C.Y.SOMAYAJULU,J)

4th January, 2006

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